

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SAUL CORONADO,

Plaintiff,

v.

ANDREW SAUL, *Commissioner of the
Social Security Administration,*

Defendant.

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EP-19-CV-00180-DCG

MEMORANDUM ORDER

Presently before the Court is United States Magistrate Judge Schydlower's "Report and Recommendation of the Magistrate Judge" (ECF No. 10) ("R&R") issued in the above-captioned action. Pursuant to 42 U.S.C. § 405(g), Plaintiff Saul Coronado brought the action, seeking judicial review of the final decision of the Commissioner of the Social Security Administration ("Commissioner") denying his applications for disability insurance benefit. In the R&R, the magistrate judge recommends that the Commissioner's "Motion to Dismiss for Untimely Appeal" (ECF No. 6), as converted to a motion for summary judgment, should be granted. R&R at 3, ECF No. 10. The judge issued the R&R on December 16, 2019; however, to date, no written objections to the R&R has been filed. *See id.* at 4 ("The parties have fourteen days from service of this report and recommendation to file written objections." (capitalization omitted) (citing 28 U.S.C. § 636(b)(1)(c); Fed. R. Civ. P. 72(b))).

When a party files timely written objections to a magistrate judge's report and recommendation, the district judge must "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). After completing its review of the report,

the district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). As to other portions—that is, the unobjected-to portions—of the magistrate judge’s report or when a party does not file written objections, the district judge applies a “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). A finding “is clearly erroneous if the court ‘is left with the definite and firm conviction that a mistake has been committed.’” *Alphonse v. Arch Bay Holdings, L.L.C.*, 618 F. App’x 765, 768 (5th Cir. 2015) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985)).

Here, the magistrate judge found, and the record reflects, that on May 9, 2018, the Social Security Administration’s Appeals Council denied Mr. Coronado’s request for review of an administrative law judge’s decision. Therefore, Mr. Coronado’s deadline to file this appeal was July 9, 2018—one year before he filed it on July 2, 2019. The judge further found that Mr. Coronado’s sworn statement that he did not receive the May 2018 denial notice was insufficient to overcome the presumption that he did receive it five days after it was mailed by the Commissioner. Having carefully reviewed the R&R, the Court concludes that these findings are not clearly erroneous or contrary to law, and the magistrate judge did not abuse his discretion. *See Wilson*, 864 F.2d at 1221, *supra*.

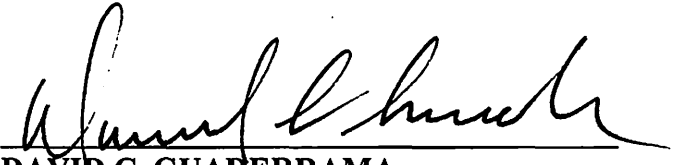
Accordingly, **IT IS ORDERED** that United States Magistrate Judge Schydlower’s “Report and Recommendation of the Magistrate Judge” (ECF No. 10) is **ACCEPTED**.

IT IS THEREFORE ORDERED that the Commissioner’s “Motion to Dismiss for Untimely Appeal” (ECF No. 6), as converted to a motion for summary judgment, is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff Saul Coronado's Complaint (ECF No. 1) is
DISMISSED WITH PREJUDICE.

IT IS FINALLY ORDERED that the District Clerk **SHALL CLOSE** this case.

So **ORDERED** and **SIGNED** this 6th day of January 2020.


DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE